

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

IZZO GOLF INC.,
f/k/a Dancorp Investors, Inc.,

Plaintiff,

v.

KING PAR GOLF INCORPORATED
D/B/A KNIGHT GOLF COMPANY,

Defendant.

Case No. 02-CV-6012 MAT-MWP

AFFIDAVIT OF MARSHALL G. MACFARLANE

The undersigned, Marshall G. MacFarlane, states as follows:

1. I am one the principal attorneys for the Defendant in this cause.
2. This affidavit is prepared in support of the Defendant's Motion for Summary Judgment of Patent Invalidity Pursuant to 35 U.S.C. §103.
3. Attached to this affidavit are 16 photographs, identified as Exhibits A1-A16.

These photographs were taken under my personal direction depicting the geometry of certain strap arrangements on golf bags as depicted in the patent references referred to in the defendant's brief, specifically, Exhibits B-I and Exhibits K-O. Specifically, the photographs correspond to the references according to the following table:

PHOTOS	PATENT
A1-A3	WILLIAMS '111
A4-A6	ZEGAR '347
A8-A10	JAPAN '843
A11-A16	JAPAN '169
	JAPAN '070

4. Photograph A1 is a depiction of the strap geometry of U.S. Patent No. 2,853,111, issued to Williams on September 23, 1958. The Williams patent discloses a pair of straps, the opposite ends of which are circumferentially spaced on either side of the spine of a golf bag. This geometry, as depicted in Figure 1, includes two individual straps.
5. Photograph A2 shows the golf bag and strap geometry of Photograph A1 with the golf bag being supported by a single strap on one shoulder of a user. The second strap, not visible in the photograph, simply hangs from the two lower attach points.
6. Photograph A3 shows the geometry of the '111 patent supported on both shoulders by the two straps, similar to the depiction of Figure 3 of the '111 patent.

7. Photograph A4 is a simulation of the geometry provided by U.S. Patent No. 4,487,347, issued to Michael Zegar on December 11, 1984. Zegar teaches the use of two separate straps attached to a rigid bar which is in turn attached to a golf bag. The opposite ends of a first strap are secured to a D-ring near the open end of the bag, and the opposite ends of the second strap are secured to a D-ring at the midpoint of the bag.
8. Photograph A5 depicts the golf bag of Photograph A4 suspended from one shoulder of the user by the uppermost strap. The lower strap is not visible in the photograph.
9. Photograph A6 depicts the bag and strap configuration of Photograph A4 being supported on both shoulders of the user, as viewed from the front. Photograph A6 shows the same configuration from the rear. In this configuration, the upper strap forms a loop which fits over the right shoulder of the user and the lower strap forms a loop which fits over the left shoulder of the user.
10. When worn over both shoulders, the bag configurations shown in Photographs A1-A6 will be transverse across the back of the user, with the angle between the longitudinal axis of the golf bag and the ground adjustable by virtue of the adjustment of the length of the individual straps. For example, as seen in Photograph A6, the longitudinal axis of

the bag forms an angle of approximately 30 degrees from the horizontal. However, by shortening the strap shown on the left side of the photograph, the longitudinal axis of the bag can be brought to a position which is parallel to the ground.

11. Photograph A8 is a simulation of the geometry of one of the bags taught by Japanese Patent Document 6,36843, published December 1, 1989. In particular, Photograph A8 is designed to simulate the bag and strap geometry depicted in Figure 4 of the Japanese '843 document. In this configuration, the straps are configured so that the lower end of the upper strap lies at a point intermediate the upper and lower ends of the lower strap, as depicted in the Japanese reference.
12. Photograph A9 depicts the golf bag of Photograph A8 being worn over one shoulder of the user.
13. Photograph A10 depicts the golf bag of Photograph A8 being worn over both shoulders of the user. Note that the ends of the straps depicted in the center of the back of the user can be selectively positioned between the two D-rings near the center of the bag, so that the ends of the strap either cross or do not cross in the middle of the user's back. Again, the angle of the longitudinal axis of the bag in relation to the ground can be varied by simply adjusting the length of the straps.

14. Photograph A11 is a depiction of the geometry of Japanese Patent Document 50-149169, invented by Hideaki Murai at least as early as May 22, 1974. The same photograph depicts Japanese Patent Document 57-149070, for a golf bag strap arrangement invented by Koji Fujiwara at least as early as March 16, 1981. In this configuration, the strap assembly consists of two straps having their upper ends affixed to a common securing means and their lower ends affixed to a common securing means on the spine of a golf bag.

15. As shown in Photograph A12, in this configuration, the golf bag may be supported on one shoulder by either strap. As shown in Photograph A13, the bag may be oriented substantially vertically in this configuration.

16. As shown in Photograph A14, the bag may be carried vertically on the back of the user utilizing both straps.

17. As shown in Photograph A15, the bag may also be worn on both shoulders by crossing the straps. Again, the angle made by the bag's longitudinal axis and the ground is adjustable by simply adjusting the length of the straps. When the bag is worn in the configuration of Photograph A15, the appearance from the front is depicted as shown in Photograph A16.

18. Exhibit B attached hereto is a true and correct copy of Japanese utility Model Announcement bearing the number 6-36843. Attached to Exhibit B is an English translation of the content of Exhibit B, prepared at my direction by University Translators of Ann Arbor, Michigan, and believed to be a true and accurate translation of the Japanese document.

19. Attached hereto as Exhibit C is a true and correct copy of Japanese Patent Application Publication No. 57-149070. Attached as part of the exhibit is an English translation of that Japanese patent document, prepared by University Translators of Ann Arbor, Michigan, and believed to be a true and correct translation of the Japanese publication.

20. Attached hereto as Exhibit D is a true and correct copy of Japanese Patent Application Publication 50-149169. Also attached to this document is an English translation of this Japanese document, prepared by University Translators of Ann Arbor, Michigan, and believed to be a true and correct translation of the Japanese document.

21. Attached hereto as Exhibit E is a true and correct copy of U.S. Patent No. 2,853,111.

22. Attached hereto as Exhibit F is a true and correct copy of U.S. Patent No. 4,487,347.

23. Attached hereto as Exhibit G is a true and correct copy of U.S. Patent no. 3,622,056.

24. Attached hereto as Exhibit H is a true and correct copy of Australian Patent Document No. 21,419.

25. Attached hereto as Exhibit I is a true and correct copy of U.S. Patent No. 2,707,009.

26. Attached hereto as Exhibit J is a true and correct copy of U.S. Patent No. 2,820,498.

27. Attached hereto as Exhibit K is a true and correct copy of excerpts of the deposition of Defendant's patent expert, John McGarry.

28. Attached hereto as Exhibit L is a true and correct copy of International Patent Document No. WO8606-593-A.

29. Attached hereto as Exhibit M is a true and correct copy of U.S. Patent No. 2,665,727.

30. Attached hereto as Exhibit N is a true and correct copy of U.S. Patent No. 3,435,867.

31. Attached hereto as Exhibit O is a true and correct copy of U.S. Patent No.

4,879,768.



MARSHALL G. MACFARLANE

STATE OF MICHIGAN)
COUNTY OF WASHTENAW)
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The foregoing document was acknowledged before me, a Notary Public, in and for said State and County, on this 30th day of August, 2007, by Marshall G. MacFarlane.

(SEAL)

Linda L. Brenan

LINDA L. BRAMAN, Notary Public

My commission expires 8-6-2012